IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5822 of 1988

For Approval and Signature:

Hon'ble MR.JUSTICE K.A.PUJ

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

A'BAD CITY NON-GOVT SECONDARY SCHOOL NON-TEACHING STAFF FED

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 5822 of 1988

MR BP TANNA for Petitioner No. 1

GOVERNMENT PLEADER for Respondent No. 1

RULE SERVED for Respondent No. 2

CORAM : MR.JUSTICE K.A.PUJ

Date of decision: 07/03/2003

ORAL JUDGEMENT

The present petition is filed by the petitioner-Federation mainly on the question of granting the members of the Federation, allowance at par with the Head Masters and teachers, who are given the benefit. The petitioner has prayed for in the petition that the

members of the petitioner-Federation are entitled to get appropriate promotions and appointments having regard to the acceptance of Second Pay Commission report and accordingly, the members of the petitioner-Federation be posted in retrospectively created posts, on the basis of the recommendations accepted by the Government and should be promoted and posted accordingly and should be given arrears of salary and all consequential benefits arising out of it. The petitioner-Federation had further prayed that the respondents should be directed to fix appropriate allowance for the work done by the members of the petitioner-Federation from June, 1976 onwards and further direction may be given to them to pay the arrears right from June 1976, till the order passed by this Court.

2) It is the case of the petitioner that the Government of Gujarat on 28-10-1975 issued a Resolution in Education and Labour Department, introducing 12 years period of education regarding higher secondary section, which, inter alia, stated that Education Commission for the years 1964-66 recommended in its report that new educational structure having pattern of 10+2+3 should be adopted by the State Government and the Union Territories Administration. The Government has, therefore, appointed committee and had come to the conclusion that higher secondary education pattern should be introduced from the academic year 1976-77. Accordingly, higher secondary course for standard 11 and 12 were introduced from June 1976 and June 1977, respectively. The class 11 of the higher secondary was required to be located in about 200 selected secondary schools and this new stage of education would serve as a concrete link between secondary stage education on the one hand and the Univesity education on the other. Regarding teaching staff, with a view to overcome the difficulties of students of rural areas and retrenchment of teachers and to accommodate as many affected teachers as possible "B" scheme schools have been provided. The ratio of teachers to a class will be 2:1 trained teachers having second class in Master's Degree in respective subjects and trained graduate teachers, who have experience of teaching in the concerned subject for about seven years in standards 10 and 11. An arrangement for supernumerary teachers were also made and arrangements were made to see that they were accommodated or absorbed in secondary or higher secondary class.

3) The main grievance of the petitioner was that the members of the petitioner-Federation have been discriminated as though the higher secondary section and

secondary section are treated as one unit, the non-teaching staff is not paid any allowance but the Principal be paid for working in standard 11 and 12 for monitoring standards 11 and 12, irrespective of the fact that whether he takes lectures or classes in higher secondary section or not. The petitioner has also made a reference to the order passed by the Tribunal constituted under Government Secondary Education Act, 1972 at Ahmedabad, in Application No.208/1982 on 27-12-1983, wherein directions were sought for to the effect that the Government should decide this question at an early date, so that the members of the non-academic staff working in the school may not have any grievance with regard to extra remuneration to them, particularly, when such extra remuneration was paid to the Head Master, as well as, other secondary teachers for working in the higher secondary school.

4) The petitioner has further submitted that the petitioner has made several representations in the past to the Government. However, no order was passed by the authorities and the members of the petitioner-Federation were every time waiting for the orders in this connection. It was further stated that the members of the petitioner-Federation was treated discriminately as compared to the teachers. It was further submitted that despite suggestion of Commission to increase the staff pattern having regard to the number of pupils attending the school and after having accepted the same, the Government has not implemented the same and it was quite clear that the members of the petitioner-Federation were firstly entitled to this from June, 1976. Having regard to the fact that Commission has suggested this pattern and they were in the alternative entitled to allowance from June 1976, in the manner in which, other employees like teachers, Head Masters and others could not be treated in this discriminatory manner, because the benefits given to them were nothing else but an eye wash.

5) The petition was admitted by this Court on 10-10-1988. An affidavit in reply was filed on behalf of the respondent No.1, wherein it is stated that in a secondary school with a higher secondary section, there are two categories of staff, namely, teaching and non-teaching staff. As regards teaching staff in the secondary section comprising of 8 to 10 standards, as per the norms, the ratios of teachers per class is 1.5, while in higher secondary section it is 2 per class. So far as non-teaching staff is concerned, its strength is based on the total student population for standard 8 to 12 as a whole and this in fact was more beneficial for

non-teaching staff as the same would result in having more avenues for promotion. It was further submitted that the teaching and non-teaching clerical work are of different types and cannot, therefore, be compared with each other. Desai Pay Commission has correlated setup of non-teaching staff with the number of students in the school as that would ensure redistribution of ministerial work from time to time which would help the management to run the school efficiently. Government has accepted the recommendation about the pattern of staff and issued orders by way of Government Resolution dated 8-3-1982. It was further submitted that pursuant to the demand of non-teaching staff, by Government Resolution dated 22-2-1999, the strength of non-teaching staff and pattern has been fixed in the said Government Resolution. There was a reference of the proceedings taken place at the joint meeting held on 28-6-1998 of the State Government authorities, as well as office bearers of Gujarat State Educational Union Committee, wherein a compromise was arrived at and it was held that instead of strength of pattern of non-teaching staff as determined vide Government Resolution dated 8-3-2002 with effect from 22-2-1999, the date on which the resolution was passed, the non-governmental secondary schools to whom the grant is provided, the strength of pattern of non-teaching staff was determined as per the formula suggested therein.

6) After having heard the learned advocate appearing for the petitioner and after having considered the memo of petition, as well as, the relevant documents attached therewith and the affidavit in reply with Government Resolution dated 22-2-1999, I am of the view that the issue raised in the present petition has already been settled by virtue of the joint meeting of the office bearers of the association, as well as, the Government authorities. Government Resolution dated 22-2-1999 specifically refers to the said joint meeting held on 28-6-1998 and as per the settlement arrived at between the parties, certain decisions were taken, the effect of which was given from the date of the said Resolution dated 22-2-1999. Since the issue is settled between the parties, grievance raised by the petitioner in the present petition cannot survive as the petitioner-Federation has agreed to a particular settlement and while looking at the note prepared, in respect of the proceedings held on 28-6-1998, it cannot be said that the present issue was left outside the scope of the said proceedings. In any view of the matter, the Court is of the view that since the members of the petitioner-Federation are getting the benefit with effect

from 22--2-1999 as per the Resolution, no directions are required to be given with regard to their claim for the past period.

7) In the above view of the matter, and subject to the aforesaid observations, the present petition is disposed of. Rule is discharged with no order as to costs.

(K.A.Puj, J.)
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